

Congress of the United States
Washington, DC 20515

August 16, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street
Washington, DC 20554

Dear Chairman Genachowski:

The deployment of broadband service is a national imperative - as important to our nation's economic success, growth and competitiveness as the postal roads, canals, rail lines, and interstate highways of the past.

Following the D.C. Circuit Court's *Comcast* decision earlier this year, the Commission's regulatory authority with respect to this vital engine of our economy was upended. Accordingly, the initiation in May of a proceeding on Commission authority was an appropriate and tailored response to the Court's *Comcast* ruling. Reclassification and clear FCC oversight as contemplated by your "Third Way" proposal is critically important for bringing the benefits of broadband to all Americans and achieving the goals set forth in the landmark National Broadband Plan, including advancement of consumer welfare, energy independence and efficiency, job creation and other national priorities.

The recent proposal by Google and Verizon of an industry-centered net neutrality policy framework reinforces the need for resolution of the current open proceedings at the Commission to ensure the maintenance of an open Internet. Rather than expansion upon a proposal by two large communications companies with a vested financial interest in the outcome, formal FCC action is needed. The public interest is served by a free and open Internet that continues to be an indispensable platform for innovation, investment, entrepreneurship, and free speech.

As the Commission's broadband proceeding moves forward, we believe that the Commission should be guided by the following fundamental principles:

1. The FCC must have oversight authority for broadband access services.

The United States has fallen behind other nations in terms of broadband deployment and adoption because of the failure to properly plan for its development and support its use; however, the National Broadband Plan represents a monumental step towards increasing deployment and adoption and unleashing the power of high speed access to create jobs, improve health care delivery, upgrade public safety tools and expand educational opportunities. Without the proper

authority to implement all facets of the Plan, we will not fulfill its full promise or achieve its goals. Classification of broadband access service under Title II, combined with the Commission's forbearance authority, would provide the necessary certainty for broadband network operators, broadband users, and Internet innovators alike.

2. Paid prioritization would close the open Internet.

Paid prioritization is contrary to the fundamental non-discrimination principles that have made the Internet the most successful communications and commercial medium in history. Such arrangements would favor certain content providers to the detriment of other content creators, degrading the traffic of providers unable or unwilling to pay. These types of arrangements, whether they are called paid prioritization or fast lanes harm the Internet. A commonsense non-discrimination requirement without loopholes is essential for an efficient marketplace where businesses and consumers – not carriers – decide the winners and losers in the Internet ecosystem. We strongly encourage you to reject any policy proposals that would permit paid prioritization of delivery of Internet content.

3. Wired and wireless services should have a common regulatory framework and rules.

Exclusion of wireless services from open Internet requirements could widen the digital divide by establishing a substandard, less open experience for traditionally underserved regions and demographic groups that may more often need to access or choose to access the Internet on a mobile device. Moreover, such inconsistent principles could confuse consumers, who would have different and uneven experiences depending solely on the connection that their mobile devices might use to reach the Internet. An Internet framework excluding wireless from important consumer safeguards could impede attainment of national broadband goals, while lessening the potential for wireless platforms to serve unserved and underserved areas.

4. Broad “managed services” exceptions would swallow open Internet rules.

An overbroad definition of the proposed “managed services” category would sap the vitality and stunt the growth of the Internet. In fact, an overly broad interpretation of managed services would create an exception that swallows the rule. For example, managed services might be rebranded or repackaged services and applications – only with priority treatment not available to competitors. By undermining competition and the value of the open Internet, managed services could have significantly negative consequences for consumers and commercial enterprises.

In sum, we believe that any rules that result from the Commission's proceedings should focus on adherence to the public interest, discourage attempts to strangle the free-flow of lawful content, applications and services for American consumers and provide certainty both for entrepreneurs and Internet users. The time for FCC action is now. We look forward to continuing to work with you and other members of the Commission to ensure that the Commission's Open Internet proceeding moves forward to protect the public interest.

Thank you for your consideration.

Sincerely,



Edward J. Markey
Member of Congress



Anna G. Eshoo
Member of Congress



Mike Doyle
Member of Congress



Jay Inslee
Member of Congress